

# HOUSE . . . . . No. 3818

[LOCAL APPROVAL RECEIVED.]

## The Commonwealth of Massachusetts

PRESENTED BY:

**James R. Miceli**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act regulating the keeping of swine in the town of Tewksbury

PETITION OF:

NAME:	DISTRICT/ADDRESS:
James R. Miceli	19th Middlesex
Michelle Walsh	90 Rounsevell Road Tewksbury, MA 01876
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# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT REGULATING THE KEEPING OF SWINE IN THE TOWN OF TEWKSBURY.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

**SECTION 1.** As used in this act the following terms shall have the following meanings:-

“Agricultural operation” the operation of keeping swine

“Approving authority” the board of health of the town of Tewksbury or its designated representatives.

“Abutters” any land owner or lessee whose property is within 500 feet of the swine operation and then abutters.

“Agroecology” the management of agricultural systems with a strong emphasis on ecological and environmental perspectives.

“Environmental assessment” an inspection by the town’s conservation administrator where the entire agricultural operation, land owned and leased is physically inspected and environmental concerns or pollution is documented. The administrator shall document concerns and violations, and shall certify there is no illegally dumped manure on the property, no runoff exists into wetland and that the operation will not contaminate the environment.

“Manure management plan” (MMP) a plan written by a qualified industry professional, recommending the handling of swine manure. It shall address clearing, composting, storage (including location in relation to wells and waterways), utilization and removal of swine manure. Such a plan shall represent the most up-to-date best management industry practices and the most stringent industry guidelines.

“Nutrient management plan” a plan written by a qualified industry professional, who tests the soil makes recommendations based on soil test results and type of crops to be planted

to ensure a balanced soil composition, based on the most up-to-date best management practices and the most stringent recommendation and guidelines.

“Pest control plan” a plan written by a qualified professional to provide recommendations to address control of pests and rodents using an integrated approach, including products to be used, based on the most up-to-date best management industry practices and the most stringent recommendations and guidelines.

“Swine” any pigs not including pot-bellied pigs kept as household pets. For the purpose of licensing swine, juvenile swine not yet weaned, residing on the property with their maternal parent shall not count as additional swine and will not require an additional or amended permit, until they are weaned.

“Swine permit” the permit granted by the approving authority to keep swine within the town of Tewksbury, valid for 12 months from date of issue.

**SECTION 2.** In accordance with section 31 of chapter 111 of the General Laws, the board of health shall promulgate and adopt reasonable rules, regulations, guidelines and policies to carry out the provisions of this act.

An agricultural operation shall apply annually to the approving authority for a permit to keep swine. The approving authority and the board of health shall be responsible for agricultural operations to obtain permits at least every 12 months. All existing, new and expansion of existing operations for keeping swine with 50 or more swine or increase of 50 or more swine, shall be required to submit a permit application for keeping swine. Every year thereafter, said permit shall not require a public hearing and all plans shall be updated and approved subject to the rules, fees and consultant approved by the approving authority.

The following information shall be required and shall accompany the permit application:

- 1) Application form, completed and showing number of swine to be kept.
- 2) A “manure management plan”
- 3) A “nutrient management plan”
- 4) A “pest control plan
- 5) An “environmental assessment”
- 6) Verification that all abutters have been notified by certified mail of the applicants intent, not more than 30 days but no less than 14 days in advance of the hearing before the approving authority.
- 7) A certified plot plan of the entire farming operation, in its entirety, including areas, which may be located in an abutting town(s). The plan and the following information will be drawn to scale and will become part of a legal document:
  - The plot plan shall reflect the location of all buildings and structures of the entire farm and their purpose.
  - The plot plan shall reflect the location and size of the area(s) the manure is located for composting, location of spreading area

(cropland) or storage area, including areas, which may be located in an abutting town(s).

- The plot plan shall reflect the location of all streams, ponds and/or wetlands or waterways, including flood zones, located on the entire property, including areas, which may be located in an abutting town(s). The location of deceased swine, composted or buried, shall be reflected on the plot plan.
- A clear designation and description of the nearest boundaries or areas covered by Tewksbury's ground water protection bylaw.

8) Permits for keeping swine, if issued, shall be issued to the owner of the property for a specific number of swine and cannot be transferred or assigned without the approval of approving authority.

9) Permits are valid for 12 months, from the date of issue, after which time it expires.

**SECTION 3.** 1) Upon receipt of the completed application, the approving authority shall hold a public hearing within 45 days, during which time, the approving authority shall:

- a) Verify that all abutters have been notified
- b) Inspect the property, and ensure that it is in accordance with the regulations.
- c) Review the "permit application for keeping swine" and required documents.
- d) Certify all application information and documents are complete and accurate.
- e) Review the file on the agricultural operation from previous years to insure it is in good standing. Review complaints from residents, environmental report from conservation administrator, and other pertinent findings.

2) The approving authority shall provide an opportunity for the abutters to express their concerns, ask questions, and express their support or opposition to the application. The board of health may require the applicant to furnish additional information to make a determination whether to grant the permit.

3) The burden shall be on the applicant to establish that the granting of a permit shall not endanger the health and wellbeing of the public, including the drinking water supplies of the community.

4) The approving authority shall act on the application for a swine permit and shall provide the applicant with a written decision of the outcome and any conditions imposed by the approving authority if the permit is granted.

5) The approving authority shall issue or deny said "permit for keeping swine". If upon examination of the required documents; there would be a negative impact to the public's health and welfare, including odor nuisance concerns, said application shall be denied, with findings forthcoming from the approving authority. Failure to provide complete and accurate documents required under Section 2 shall be grounds for denial.

**SECTION 4.** In the absence of standard regulations for swine buildings, for all size operations, from the agricultural industry and state laws requiring the same, the town of Tewksbury shall

require agricultural operations to comply with state building code and a component for public input;

- 1) Building or renovation of swine buildings shall require a permit application.
- 2) The applicant shall notify abutters and a public hearing shall be conducted.
- 3) The applicant shall submit plan to approving authority.
- 4) The citizens shall be given every opportunity to express their concerns during the public hearing and said concerns shall be remedied by the approving authority.
- 5) For new construction or renovation, the decision to issue a permit, by the approving authority, shall place the weight of the decision on the appropriateness of the building or improvements for the neighborhood and the welfare of the neighborhood.
- 6) All new construction or renovation of primary stables, pens or housing used to contain swine shall be a minimum 1760 feet from any lot line and shall be designed with the industry's most recent and most stringent requirements and recommendations for minimizing odors and environmental pollution. The applicant for a swine permit may be allowed a variance for a lesser setback if an engineer or qualified professional as determined by the approving authority, hired by the applicant, prepares an approved odor dispersion plan resulting in improved or equivalent odor minimization and dispersion on the neighborhoods surrounding the operation. The odor dispersion plan shall include, but is not limited to, the following; odor control measures, meteorological data, prevailing wind direction and topography. The odor dispersion plan shall include biofilters and tall air stacks or similar implementations to provide optimum odor minimization and disbursement.

**SECTION 5.** In the absence of standard regulations requiring a manure management plan for all size swine operations, from the Agricultural Industry and State Laws requiring the same, the town of Tewksbury shall require a Manure Management Plan each year, as required in the "permit application for keeping swine".

- 1) The submitted Manure Management Plan (MMP) shall be written by a qualified industry professional and reviewed by the approving authority prior to issuance of a permit.
- 2) The MMP shall represent best management industry practices and shall use the most stringent developments in industry regulations and guidelines and technology, regardless of the size of the operation.
- 3) The MMP shall address clearing, composting, storage (including location in relation to streams ponds, wetlands, flood zones, and ground water protection areas), utilization and removal of manure.
- 4) The MMP shall require management and disposal of manure in a way, which minimize odors, breeding flies and the attraction of vermin.
- 5) The MMP shall require manure to be collected and stockpiled at a location(s), carefully chosen to maximize the distance from abutting properties and watercourse and with due consideration of the prevailing winds.
- 6) The storage of manure, wastes and soiled bedding and the maintenance of pens or corrals for swine shall not interfere with any abutter's rights to clean air or to the use and enjoyment of their property.

- 7) The board of health or its agent and the local health department shall investigate any complaints of offensive odor, pollution or pests (such as rats, mice, insects, flies or mosquitoes) associated with the keeping of swine within the town of Tewksbury and find a remedy in accordance with Section 10.
- 8) The board of health and the local health department shall track manure production and disposal, documenting and accounting for all swine waste. These documents shall be available to the public.
- 9) Upon every visit to the property, the health official shall inspect and measure storage areas, measuring the contents of the swine waste storage tank or the height and width of manure piles and their location on the property and document the findings. This information shall be available to the public.

**SECTION 6.** The town of Tewksbury shall require a nutrient management plan annually as required in the permit application for keeping swine.

- 1) The submitted nutrient management plan shall be written by a qualified industry professional and reviewed by the approving authority prior to issuance of a permit.
- 2) The nutrient management plan shall represent best management industry practices and shall use the most stringent developments in industry regulations, guidelines and technology, regardless of the size of the operation. The plan shall address pollution prevention, optimizing soil nutrient uptake and minimizing soil nutrient overload and runoff. Soil testing shall be completed prior to filing an application and reflect the most current soil conditions. The plan shall reflect the practices consistent with agroecology.
- 3) Upon every visit to the swine operation, regardless of reason for visit, local health department officials shall require follow up on the nutrient management plan, inspecting the property for violations in the plan and documenting said violations. All information shall be documented and action taken, in accordance with section 10.

**SECTION 7.** The town of Tewksbury shall require a pest control plan annually as required in the permit application for keeping swine.

- 1) The pest control plan shall be written by a qualified industry professional and reviewed by the approving authority prior to the issuance of a permit.
- 2) The pest control plan shall represent best management industry practices and shall use the most stringent developments in industry regulations, guidelines and technology, regardless of the size of the operation.
- 3) Upon every visit to the swine operation, regardless of reason for visit local health department officials shall require updates of pest problems experienced on the property and control measures taken, including type of pest problem, action taken and results. All information shall be documented and action taken, in accordance with section 10.

**SECTION 8.** The town of Tewksbury shall require an environmental assessment annually as required in the permit application for keeping swine.

- 1) The submitted environmental assessment shall be written by a qualified industry professional and reviewed by the approving authority prior to issuance of a permit.

- 2) The environmental assessment shall represent best management industry practices and shall use the most stringent developments in industry regulations, guidelines and technology, regardless of the size of the operation.
- 3) No swine facility shall willfully or through negligence, cause, suffer, allow or permit of any liquid effluent containing urine and/or fecal matter from the property to flow over the surface of the ground where it can flow to abutting property, public way, watercourse, body of water, or wetland area.
- 4) All insecticides used to control pests or insects shall be approved by the department of public health and the department of environmental protection and shall be applied in accordance with the instruction for the use of that insecticide.
- 5) Upon every visit to the swine operation, regardless of reason for visit, local health department officials shall require updates of pest problems experienced on the property and control measures taken, including type of pest problem, action taken and results. All information shall be documented and action taken, in accordance with section 10.

**SECTION 9.** The town of Tewksbury shall determine standards for swine odor relief and prevention.

- 1) All agricultural operations keeping swine shall use best management industry practices and shall use the most stringent developments in industry regulations, guidelines and technology, regardless of the size of the operation. Swine operations shall use the recommendations, and the latest research and technology, of the environmental protection agency, department of agriculture, national resources conservation service and other industry agencies and organizations, to minimize odors.
- 2) Decomposition of piggery wastes generates by-products or compounds which produce strong odors. Odor generation from swine waste shall be minimized by the barn design, effluent collection and storage location, carcass disposal, and manure spreading. Swine waste shall be managed in a way as to minimize odor generation and shall use best management industry practices to minimize odors.
- 3) Odors are influenced by climate and topography, separation distance plays an important role in the dispersion of odors from swine operations, therefore, swine operations shall be established or moved to a sufficient distance from residences, to ensure that dispersion effectively limits odors and frequencies under the expected range of atmospheric conditions. If a sufficient distance to disperse odor cannot be established, more additional and/or more prudent measures shall be taken on behalf of the swine operation, to monitor air quality standards and ensure abutters rights to clean air and use and enjoyment of their property.
- 4) The director of health or its agent and the board of health shall examine all the factors influencing swine operation odors and take action to relieve neighboring residents. Each complaint shall be documented and shall include: frequency, intensity, duration and offensiveness.
- 5) Sludge from swine waste is comprised of either completely or partially digested organic matter which when disturbed can be highly odorous. When disturbed or irrigated, effluent generates odors through the release of offensive gases and by spray drift of fine aerosols through the atmosphere. The application of swine effluent shall

230 be managed so that effluent infiltrates, or is incorporated into the soil within 24 hours  
231 following application.

232 6) There shall not be application of swine waste during prolonged wet periods or when  
233 runoff would occur. Timing of effluent application shall be considered, during the  
234 weekdays when most residents are at work. It shall not occur on weekends or  
235 holidays, or when prevailing weather conditions would cause odors. During times  
236 when swine waste cannot be applied to soil, alternative methods of manure  
237 management shall be used, using best management practices.

238 7) Carcass disposal shall be well designed and managed to prevent odor and spread of  
239 diseases. Burial sites shall be designed to prevent entry of upslope runoff water. The  
240 whole carcass shall be covered with a layer of soil immediately after placement in the  
241 pit. If composting is used, the carcass should be covered with at 300 mm of sawdust  
242 or other composting substrate. Records shall be kept of deaths and location of burial.

243 **SECTION 10.** The town of Tewksbury shall define enforcement standards for the health  
244 department and board of health for swine regulation.

- 245 1) Regular inspections shall be performed, as needed, without prior notification in  
246 accordance with sections 4 through 10.
- 247 2) Non-compliance of any regulations for keeping swine shall be documented and  
248 permits may be revoked or suspended if it is determined that any of the following has  
249 occurred:
- 250 - Continued keeping of swine constitutes a public safety of health risk.
  - 251 - The animals are not receiving proper care.
  - 252 - The facts contained in the application or as represented by the application  
253 to the approving authority are inaccurate.
  - 254 - The permit holder is keeping swine in greater numbers than indicated on  
255 the current permit.
  - 256 - Abutter's rights to use and enjoy their property have been violated.
  - 257 - The health and wellbeing of the citizens are negatively impacted.
  - 258 - The best management practices and most stringent industry standards and  
259 recommendations have not been used and/or implemented by the  
260 operation.
  - 261 - Violations occur to "Tewksbury's agricultural regulations for keeping  
262 swine".
- 263 3) There will be a hearing and issue of conditions on a revocation of a permit. The  
264 holder of any permit revoked or suspended, shall be notified of such action by  
265 certified mail. The person aggrieved may petition the approving authority for a  
266 public hearing within 10 days of notification. The applicant may be permitted to keep  
267 said swine on the premise until the approving authority hearing, so long as it does not  
268 pose an immediate threat to the public health and safety, in which case the swine must  
269 be removed within 24 hours of the receipt of the notice.
- 270 4) Complaints shall be logged and investigated immediately.
- 271 5) Citizens shall be given every opportunity to express their concerns during a public  
272 hearing and said concerns shall be remedied by both the department of health or its  
273 agent and the board of health.
- 274 6) Unresolved problems shall be remedied by revoking the permit for swine.



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- 7) Violations of the act or regulations promulgated hereunder may be punishable by civil action or criminal prosecution.